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Supreme Court of the United States

OCTOBER TERM, 1961.

No. 243

JOHNNY ALBERT AND MRS. JAMES E. NORRIS,
Petitioners,

versus

STATE OF LOUISIANA,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE UNITED STATES.

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IN THE
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To The Chief Justice Of The United States And The Justices Of The Supreme Court Of The United States:

Petitioners respectfully pray that writs of certiorari issue to review the judgments of the Supreme Court of Louisiana, entered on June 20, 1961, refusing writs as to convictions and sentences imposed by the Sixteenth Judicial District Court in and for the Parish of

Iberia, Louisiana. In separate trials, based upon identical facts, petitioners were convicted of the offense of resisting an officer, defined by La. R. S. 14:108, and sentenced each to serve 10 days in jail and to pay fine of $75.00 and costs or serve an additional 30 days, with the 10 day sentence as to Johnny Albert being suspended for one year during good behavior.

Upon their giving notice of intent to apply to the Louisiana Supreme Court for writs (there being no appeal under Louisiana law), sentences were stayed by the Trial Judge to June 26, 1961. Such writs were denied on June 20, 1961, and upon motion expressing intent to apply for writs to Your Honors, the Louisiana Supreme Court stayed sentence for 30 days on June 23, 1961.

OPINIONS BELOW.

The Louisiana Supreme Court, in denying writs, stated merely, "The showing made in the application is insufficient to justify the exercise of our supervisory powers." The reasons stated by the Trial Court, which form but part of the basis for this application, are reproduced in Appendix 1. The certificates of the Clerk of the Louisiana Supreme Court accompany the duplicate originals of the records from that court being filed herein.

JURISDICTION.

Dates of judgments and rulings are stated above. The jurisdiction of this court is invoked under 28 U. S. C.

§ 1257 (3), and the First, Fifth, Sixth and Fourteenth Amendments to the United States Constitution.

QUESTIONS PRESENTED.

1. Does Article 7, § 42, of the Louisiana Constitution and La. R. S. 15:340, providing that there shall be no trial by jury in misdemeanor prosecutions, and La. R. S. 14:108, defining as a misdemeanor the offense of resisting an officer, and providing for imprisonment for as much as six months and fine up to $300.00 for said offense, violate the guarantee of jury trial contained in the Sixth Amendment?

2. Are the guarantees of due process and equal justice, contained in the Fifth and Fourteenth Amendments, violated by Louisiana Constitution, Art. 7, § 10, which grants right of appeal, on questions of law only, to the Louisiana Supreme Court only where fine exceeding $300.00 or imprisonment exceeding six months has been actually imposed, there being otherwise no right of appeal to any court, particularly in view of Louisiana Constitution, Art. 7, § 83, which provides for appeals, in Orleans Parish only, on both facts and law, to an appellate division of the Criminal District Court, in those cases in which appeal does not lie to the Louisiana Supreme Court?

3. One of instant relators having been charged by bill of information with resisting an officer on March 4, 1961, and having been convicted upon evidence showing presence and participation by both relators in the occurrence on that date, and the grand jury, prior to

such trial and conviction, having indicted relators for said offense committed on March 4, 1961, can the District Attorney, after the first witness has once testified as to an incident of March 4, 1961, but on cross-examination stated it took place on April 22, 1961, then be permitted to amend the grand jury indictments to change the date of the alleged offenses to April 22, 1961?

4. Has due process and equal justice been accorded by the Louisiana Court:

a. In convicting relator, Johnny Albert, of the offense of resisting an officer upon proof only that the officers entered his home and arrested one James E. Norris, asked Norris to let them see his wallet, Albert then commenting "a lawman can't arrest a wallet", or words of similar import, without saying or doing anything more, James E. Norris then placing his wallet on a table within reach of two of the officers, who shortly thereafter took Norris away without there having been any other resistance, opposition or obstruction by either Albert or Norris?

b. In convicting relator, Mrs. James E. Norris, upon indictment and a bill of particulars alleging that she had physically resisted the officers in their efforts to search her husband incidental to his arrest, when there was evidence only that after the wallet had lain on the table for a time, she picked it up and left?

5. Is the Judicial interpretation of La. R. S. 14:108 given in the *Albert* case violative of the guarantee of freedom of speech?

STATUTES INVOLVED.

Provisions of the Louisiana Constitution and Revised Statutes relevant to the question presented are reproduced in Appendix 2, it being deemed unnecessary to reproduce Federal Constitutional and statutory provisions.

STATEMENT OF THE CASE.

While the incident here involved took place on April 22, 1961, it is part of a series of events and prosecutive harassment which began in the town of Loreauville on March 4, 1961, when an Iberia Parish deputy sheriff severely beat Mr. and Mrs. James E. Norris, who were subsequently charged in bills of information with having resisted the deputy.*

* On March 4, one Pierce, employed by a finance company, sought to seize the Norris automobile without legal authority. Instead of getting court order, required in Louisiana, where conditional sales are not recognized, Pierce was accompanied by a deputy sheriff. When Norris declined to surrender the car, Pierce threatened criminal charge against Mrs. Norris, on the basis of a $5.00 worthless check she had passed at a drugstore, and which Pierce had purchased to use as a threat, in the mistaken belief he could file charge.

Norris offered to redeem the check, Pierce refused and the deputy directed Pierce to go to a nearby Justice of the Peace to file charge and bring back a warrant. When Norris sought to leave, he had words with the deputy, who proceeded, without any resistance by Norris, to beat Norris, breaking his jaw, impairing the vision in one eye and inflicting other injuries. When Mrs. Norris came from the house, saw the beating and sought to intercede, the deputy injured her.

The Norrises were taken to the Iberia Parish jail, where they stayed for two weeks, without charges filed or bail fixed. An attorney visited them and the F. B. I. began investigation. Mrs. Norris was then charged in 14 separate cases, Mr. Norris was charged, at various times in the next three months, in 8 cases.

Relator Albert has been surety on their bail bonds.

As Norris has been required to be in court about once a week, he has been unable to resume work on oil wells in the Gulf, and costs of defending, including large amounts necessary to obtain transcripts, have impoverished them, leaving nothing to pay fee of counsel or further court cost.

On April 22, 1961, three deputies came to the Albert home and asked for Mr. Norris. They entered and informed Mr. Norris that they had a radiogram from St. Mary Parish to the effect that a warrant was there for his arrest. After a brief conversation, Deputy Comeaux asked Norris to let them see his wallet, whereupon Albert said, "A lawman can't arrest a wallet."

This deputy said Albert was then between that deputy and Norris; the other two deputies testified they were next to Norris, with nobody in between.

There was no explanation offered as to why they wanted the wallet, and the deputies did not seek to search Norris. Instead, Deputy Comeaux went outside, and Norris then laid his wallet on a table within reach of the other two deputies, who deliberately refrained from taking it.

After a time, Mrs. Norris picked up the wallet and went into another room. Deputy Comeaux returned, and the deputies then left with Mr. Norris.

On April 24, 1961, the grand jury indicted Albert and Mrs. Norris for resisting an officer on March 4, 1961. Relators were unaware of these indictments until they appeared in court the next morning for trials of Mr. and Mrs. Norris under the bills of information, at which time both relators were called up for arraignment under the indictments.

Immediately thereafter, Mr. and Mrs. Norris were tried and convicted under the bills of information, the

evidence showing that Albert had physically halted the beating being administered Mr. Norris by the deputy on March 4, 1961. Sentences were deferred for completion of the transcripts, available only on counsel's promise to pay for same.

Counsel had previously informed Court and District Attorney he was committed to the Court in Baton Rouge for trial of a felony on May 15, 1961. When, on April 25, he asked leave to file pleadings to the indictments, the Court fixed May 15 as the date for hearing same, and he again urged his objection, with reasons, and without success.

On May 1, 1961, applications for bills of particulars were filed in connection with the indictments, same having been forwarded by mail, as relators' counsel resides and has his office in another Parish, copy being sent the District Attorney.

On May 15, 1961, in absence of relators' counsel, the District Attorney filed bills of particulars to the effect that the deputies were making search of Norris incidental to arrest when the crime was committed by Albert advising Norris not to surrender his wallet and by Mrs. Norris secreting the wallet. No copy thereof was sent to relators' counsel.

On May 19, 1961, relators were called for trial, and their counsel entered objections to the proceedings in his absence on May 15, which were overruled, whereupon he asked to see the bills of particulars, and then

objected to same for several reasons, including their failure to charge an offense. These objections were likewise rejected.

The District Attorney moved to amend the Albert bill of particulars to further allege that Albert had placed himself between the deputies and Norris.

Counsel objected to the amendment, urged that the bill of particulars, even with amendment, disclosed no offense, and moved for a continuance, all being denied by the Court.

Trial of Albert began, with Deputy Comeaux as first witness. On direct examination he was asked about events of March 4, 1961, and testified fully to the details of what had actually taken place on April 22. At the beginning of cross-examination, he was asked if he was testifying about March 4, and replied he was not, whereupon the District Attorney moved to amend the indictment to show date of offense as April 22.

Relator's counsel objected, not because the date alleged in the indictment cannot ever be amended, but because the events of March 4, as shown by prior trials and convictions, were of a nature as might well have induced grand jurors to indict for offenses on that date, without intending to indict for the same crimes on April 22. The Court allowed the amendment.

On relators' motion, continuance was granted to May 24, 1961, on which date Albert was found guilty by the

judge. It was then stipulated that the entire proceedings as to Albert should be made part of trial of Mrs. Norris, with objections again made and particularized and overruled. The Court then found Mrs. Norris guilty.

In each case, sentence was then imposed, and upon counsel's statement of intent to apply to the Louisiana Supreme Court for writs, sentence was stayed to June 26, 1961, and has been further stayed, as stated heretofore.

The applications for writs made to the Louisiana Supreme Court appear in duplicate originals of said applications and all annexed exhibits and transcripts which are being submitted separately, the transcripts being too voluminous for reproduction herein.

REASON FOR GRANTING THE WRITS.

Under Louisiana law, misdemeanors call for punishments which may be as much as imprisonment for two years (e.g., La. R. S. 14:35), and relators and others who will be similarly situated, are entitled to a ruling as to whether denial of jury trial by the Louisiana Constitution and statutes violates the Federal Constitutional guarantee of trial by jury.

Under Louisiana Constitution and laws, one given sentence in excess of six months imprisonment and or $300.00 fine, has right of appeal to the Louisiana Supreme Court on questions of law only; in Orleans Parish, those who have no appeal to the Louisiana Supreme Court

are accorded right of review on both facts and law, to a special tribunal; in all other Parishes, such persons have no right of appellate review whatsoever. Relators and others who will be similarly situated are entitled to a ruling as to whether such Louisiana laws deprive such persons of Federal Constitutional guarantees of due process and equal justice.

Inasmuch as many, if not all, States have statutory provisions identical or similar to La. R. S. 14:108, the question of whether such statute may be interpreted as depriving an individual in his own home of the right to speak to an officer, under penalty of imprisonment if he does, and whether such interpretation renders the statute violative of the Federal guarantee that freedom of speech may not be abridged, is a matter of primary importance to all citizens.

The Louisiana Constitution provides (Art. 1, § 10) that the accused shall be informed of the nature of the charge against him, and the Louisiana Supreme Court has held that all allegations necessary to so inform must be included in the indictment, although other details may be secured through bill of particulars. *State v. Straughan*, 229 La. 1036, 87 So. (2d) 523. When the grand jury returns a true bill charging the offense to have taken place on March 4, and there is evidence of facts in support of such a charge for that date, an accused on trial is deprived of due process and equal justice when the District Attorney, after a witness has testified, is permitted to amend the indictment to change the date of the offense to April 22, because,

under such circumstances, the date is a very substantial element, and there would be reason for a grand jury to indict for the events of March 4, 1961, while unwilling to indict for those of April 22, 1961.

STAY ORDER.

This application being filed in vacation, and the stay orders of the Louisiana Supreme Court not extending through vacation, relators request such orders as may be necessary to preserve relators' position until this application be granted or denied.

CONCLUSION.

Relators suggest that the issues here sought to be raised are of such Constitutional import, affecting liberty and property of so many citizens, and the entire structure of Louisiana law relative to trial by jury and appellate review is at question, and that relators' own constitutional rights have been so violated, that certiorari should issue.

Respectfully submitted,

SIMON & TRICE,
Attorneys at Law,
301 East Congress Street,
Lafayette, Louisiana,
Counsel for Relators.

By J. MINOS SIMON.

CERTIFICATE OF SERVICE.

Copies of the above and foregoing petition for certiorari have been served upon Honorable Knowles Tucker, District Attorney, New Iberia, Louisiana, Honorable S. O. Landry, District Judge, New Iberia, Louisiana, Honorable Jack P. F. Gremillion, Attorney General of Louisiana, State Capitol, Baton Rouge, Louisiana, and Honorable Val J. Courville, Clerk, Louisiana Supreme Court, New Orleans, Louisiana, by mail, postage affixed and prepaid, on July , 1961.

J. MINOS SIMON.

APPENDIX 1.

BY THE COURT:

Although counsel for the accused in his motion for a directed verdict did not state specifically the basis for his motion, I assume that he has in mind the case of State vs. Scott, 123 La. 1085. In that case our Supreme Court held that some active resistance must be made by the accused or the use of words that would necessarily imply that great force would have to be used by the officer to accomplish his purpose.

However, in that case the Court had under consideration a different statute than we have here. That statute made it a crime to oppose, resist, or assault an officer. In this case the statute covers opposition, resistance, or obstruction. The word "obstruct" has been substituted for the word assault.

There is a decision reported in the 48 A.L.R., at page 749, in United States vs. McDonald, 8 Biss. 439, defining the word obstruct. I do not find any Louisiana cases in the short time that I had to look it up defining that word. But that Federal Court gave to the word "obstruct" the ordinary, everyday meaning that we generally understand it to be. And it said substantially that obstruct means "to interpose obstacles or impediments to hinder, impede, or in any manner interrupt or prevent, and this term does not necessarily imply the employment of direct force or the exercise of direct means. It includes any passive, indirect, or circuitous impediments to the service or execution of process; such as hindering or preventing an officer by not opening a door or removing an obstacle, or concealing or removing property."

The evidence tendered by the State shows that this accused by direct language assisted, abetted and advised a person under arrest to conceal incriminating evidence that the officers were seeking to obtain from the person arrested. It obviously constitutes an obstruction to what the officers had a legal duty to do.

I find from the evidence that the arrest was lawful as defined by R. S. 15:60, paragraph 5, in that the officers had information from an authoritative source that a warrant had been issued for the arrest of the person of Mr. Norris, and that under the provisions of R. S. 15:68 it was the officer's duty to search Mr. Norris and remove from his person any dangerous weapons and incriminating evidence.

In this case the testimony shows that the incriminating evidence sought by the officers was a credit card and they believed that it was in Mr. Norris's purse. By his advice this accused very obviously obstructed the officers in the performance of their legal duties. Undoubtedly, it comes within the provision of the statute under which this accused is charged.

For these reasons, therefore, the motion for a directed verdict is denied.

BY MR. TRICE:

To which ruling we respectfully object and reserve a bill of exceptions, Your Honor.

BY THE COURT:

Yes, sir.

BY MR. TRICE:

And at this time, defense rests.

EVIDENCE CLOSED.

BY THE COURT:

For the reasons I have just said. I find the accused guilty as charged.

APPENDIX 2.

Excerpts from Louisiana Constitution and Statutes.

Louisiana Constitution.

Art. 1, § 10:

In all criminal prosecutions, the accused shall be informed of the nature and cause of the accusation against him; and when tried by jury shall have the right to challenge jurors peremptorily, the number of challenges to be fixed by law.

* * * * *

Art. 7, § 10:

The Supreme Court shall have control of, and general supervision over all inferior courts and shall have further jurisdiction as follows:

APPELLATE JURISDICTION; CRIMINAL. The appellate jurisdiction of the Supreme Court shall also extend to criminal cases on questions of law alone, whenever the penalty of death, or imprisonment at hard labor may be imposed; or where a fine exceeding three hundred dollars or imprisonment exceeding six months has been actually imposed.

Art. 7, § 42:

GRAND JURY; DISTRICT JUDGES, AUTHORITY IN CRIMINAL CASES.

* * * * *

The district judges shall have authority to try at any time misdemeanors, and, when the jury is waived by the defendant, all cases not capital or necessarily punishable at hard labor, and to receive pleas of guilty in all cases less than capital.

Art. 7, § 83:

ORIGINAL JURISDICTION. The Criminal District Court for the parish of Orleans shall have exclusive jurisdiction of the trial and punishment of all crimes, misdemeanors and offenses committed within the parish of Orleans, the jurisdiction of which is not vested by this Constitution in some other court.

APPELLATE JURISDICTION. It shall have appellate jurisdiction of all cases tried before the Juvenile Court for the parish of Orleans and the Recorders' Courts of the City of New Orleans, as provided in this Constitution. Said appeals from the Recorders' Courts shall be on the law and the facts and shall be tried upon the records made and the evidence offered in said courts by the judge to whom the appeal shall be allotted. In all cases tried before the judges of the said Criminal District Court in which an appeal does not lie to the Supreme Court, and in cases tried before the Juvenile Court, an appeal shall lie on questions of law and fact to two or more of the judges of the said Criminal District Court, as may be prescribed by said Court; and the court shall adopt rules regulating the manner of taking and hearing and deciding said appeals.

Louisiana Revised Statutes.

14:35:

Simple battery is a battery, without the consent of the victim, committed without a dangerous weapon.

Whoever commits a simple battery shall be fined not more than three hundred dollars, or imprisoned for not more than two years, or both.

14:108:

Resisting an officer is the intentional opposition or resistance to, or obstruction of, an individual acting in his official capacity and authorized by law to make a lawful arrest or seizure of property, or to serve any lawful process or court order, when the offender knows or has reason to know that the person arresting, seizing property, or serving process is acting in his official capacity.

The phrase "obstruction of" as used herein shall, in addition to its common meaning, signification and connotation mean:

(a) Flight by one sought to be arrested before the arresting officer can restrain him and after notice is given that he is under arrest.

(b) Any violence toward or any resistance or opposition to the arresting officer after the arrested party is actually placed under arrest and before he is incarcerated in jail.

(c) Refusal by the arrested party to give his name and make his identity known to the arresting officer.

Whoever commits the crime of resisting an officer shall be fined not more than three hundred dollars, or imprisoned for not more than six months, or both.

15:340:

Every misdemeanor shall be triable by the judge without the intervention of a jury.